

Applicant: STEMMLER
U.S. Serial No.: 09/492,214
Filing Date: January 27, 2000
Amendment and Reply to Office Action
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REMARKS

By this amendment, Applicants have amended claims 42 as suggested by the Examiner to remove the "at least some" phrase and include that the signal is measured in a defined volume of the liquid phase. Applicants have also added new claims 60 and 61. Claim 60 includes a competitive assay for the qualitative determination of an analyte where signal does not need to be measured in a defined volume of the liquid phase. Claim 61 includes a competitive assay for the qualitative determination of an analyte where the signal is measured in a defined volume of the liquid phase. Support for this amendment can be found in the specification, for example, at page 7, first full paragraph, page 8, second full paragraph, pages 9-10, page 13, first full paragraph and at page 14, second paragraph to page 15, fourth paragraph. No new matter has been added. Applicants respectfully request entry of the amendment and allowance of the pending and new claims.

Rejection under 35 U.S.C. §112, Second Paragraph

The Examiner rejected claims 3-5, 10-16, 19, 21, 23, 33-36, and 42-44 as allegedly indefinite for reciting the phrase "at least some".

Applicants respectfully disagree with the Examiner and submit that the claims are clear to a person of ordinary skill in the art upon reading the specification. However, solely to expedite prosecution, Applicants have amended the claims to remove the "at least some" phrase. Accordingly, Applicants request reconsideration and withdrawal of the rejections based on 35 U.S.C. § 112, second paragraph.

Rejections Under 35 U.S.C. § 112, First Paragraph

The Examiner rejected claims 3-5, 10-16, 19, 21, 23, 33-36, and 42-44 as allegedly lacking enablement. The Examiner takes the position that the specification allegedly does not enable "the qualitative and quantitative determination of signal generated from any and all of the labeled competitive substance." (Office Action, Page 4, emphasis added).

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Applicants respectfully disagree with the Examiner and request that she reconsider her position. However, solely to expedite prosecution, Applicants have amended the claims to include "measuring the signal only generated from the unbound labeled competitive substance in a defined volume of liquid phase" as suggested by the Examiner on pages 3 and 4 of the May 4, 2005 Office Action. New claim 60 recites "measuring the signal only generated from the unbound labeled competitive substance". Thus, all the claims specify that measurement is taken from the **unbound** labeled competitive substance and not **all** the labeled competitive substance (e.g., bound and unbound) as the Examiner alleges. Accordingly, Applicants submit that the specification fully enables the claims and request reconsideration and withdrawal of the rejection based on 35 U.S.C. § 112, first paragraph.


Conclusion

Reconsideration and allowance are respectfully requested.

No fee is believed to be due with respect to the filing of this amendment. If any additional fees are due, or an overpayment has been made, please charge, or credit, our Deposit Account No. 11-0171 for such sum.

If the Examiner has any questions regarding the present application, the Examiner is cordially invited to contact Applicants' attorney at the telephone number provided below.

Respectfully submitted,



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